



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
October 29, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 4119
RETURN RECEIPT REQUESTED

Mr. Jeff Gibson
HydroDynamics International Inc.
5711 Enterprise Dr.
Lansing, Michigan 48911

Consent Agreement and Final Order In the Matter of
HydroDynamics International Inc. Docket No. FIFRA-05-2015-0004

Dear Mr. Gibson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on October 29, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,100 is to be paid in the manner described in paragraphs 34 through 36. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by November 28, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terence Bonace", is written over the typed name.

Terence Bonace

Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**HydroDynamics International Inc.
Lansing, Michigan,

Respondent.**

Docket No. FIFRA-05-2015-0004

**Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)**

Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is HydroDynamics International Inc., a corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. 7 U.S.C. § 136(u).

13. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

14. The Administrator of EPA may assess a civil penalty against any registrant, dealer,

retailer, or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

15. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

16. The Administrator of EPA may assess a civil penalty against any registrant, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. Respondent is a “registrant” as defined at Section 2(z) of FIFRA, 7 U.S.C. § 136(z) and a wholesaler, dealer, retailer, or other distributor.

19. Respondent owned or operated a place of business located at 5711 Enterprise Drive, Lansing, Michigan during the calendar year 2013.

20. On October 8 and October 10, 2013, inspectors employed by the Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Lansing, Michigan.

21. During the October 8 and 10, 2013 inspection, the inspectors collected labels, a Material Data Safety Sheet(MSDS), and sales records for the product Nitrozime Marine Algae Extract which Respondent was holding for distribution or sale.

22. Respondent’s label for Nitrozime Marine Algae Extract collected on October 8,

2013 states: “Nitrozyme is an all-natural marine algae extract that helps promote vigorous growth.”

23. Respondent’s MSDS for Nitrozyme states that it is an “extract from Algae (*Ascophyllum nodosum*).”

24. Respondents web site at hydrodynamicsinc.com states that Nitrozyme Marine Algae Extract “is a plant nutrient supplement derived exclusively from a natural form of marine algae known as *Ascophyllum nodosum* seaweed. Nitrozyme Marine Algae Extract is extremely concentrated, eight times more so than common seaweed fertilizers, and contains many of the naturally produced nutrients and growth hormones that all plants require for vigorous, healthy growth.”

25. *Ascophyllum nodosum* contains cytokinins, a known plant growth regulator.

26. Nitrozyme Marine Algae Extract a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Count I

27. Respondent distributed or sold Nitrozyme Marine Algae Extract to a business in California on April 3, 2013.

28. Nitrozyme Marine Algae Extract was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on April 3, 2013.

29. Respondent’s distribution or sale of the unregistered pesticide Nitrozyme Marine Algae Extract constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count II

30. Respondent distributed or sold Nitrozyme Marine Algae Extract to a business in

California on April 30, 2013.

31. Nitrozime Marine Algae Extract was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on April 30, 2013.

32. Respondent's distribution or sale of the unregistered pesticide Nitrozime Marine Algae Extract constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

33. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$6,100. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,100 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note HydroDynamics International Inc. and the docket number of this CAFO.

Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Jose DeLeon (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

39. This CAFO does not affect the rights of EPA or the United States to pursue

appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

41. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

42. The terms of this CAFO bind Respondent, its successors and assigns.


43. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorneys' fees, in this action.

45. This CAFO constitutes the entire agreement between the parties.

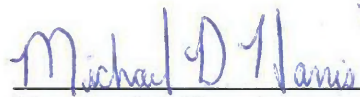
HydroDynamics International Inc., Respondent

9/19/14
Date


Jeffrey Gibson
President
HydroDynamics International Inc.

United States Environmental Protection Agency, Complainant

10/16/2014
Date

 To M.G.
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
HydroDynamics International Inc.
Docket No. **FIFRA-05-2015-0004**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/24/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Hydrodynamics International Inc., was filed on October 29, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 4119, a copy of the original to the Respondent:

Mr. Jeff Gibson
HydroDynamics International Inc.
5711 Enterprise Dr.
Lansing, Michigan 48911

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jose DeLeon, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. **FIFRA-05-2015-0004**